

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DUSTIN ROSS KELLY,

Petitioner,

V.

RONALD FRAKER,

Respondent.

CASE NO. C12-5993 BHS

**ORDER DENYING
PETITIONER'S MOTION**

This matter comes before the Court on Petitioner Dustin Ross Kelly’s (“Kelly”)

motion to strike and supplement his petition (Dkt. 15.).

On April 7, 2014, Kelly filed the instant motion requesting that the Court strike his

first petition and allow supplemental briefing based on ineffective assistance of counsel.

Dkt. 15. On April 18, 2014, Respondent responded and argued that Kelly's motion was

procedurally and substantively improper for numerous reasons. Dkt. 16. The Court

agrees because Kelly is essentially requesting a second or successive petition. The

request is procedurally improper because such requests must be made to the Court of

Appeals, 28 U.S.C. § 2241(h)(3)(A). The request is substantively improper because

¹Ineffectiveness of counsel in a federal habeas proceeding shall not be a ground for relief.

1 in a subsequent habeas proceeding. 28 U.S.C. § 2254(i). Therefore, the Court **DENIES**
2 Kelly's motion.

3 **IT IS SO ORDERED.**

4 Dated this 21st day of May, 2014.

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BENJAMIN H. SETTLE
United States District Judge

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